

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1244

Short Title: Family Court Pilot Districts.

(Public)

Sponsors: Representative Baddour.

Referred to: Judiciary II.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ALTERNATIVE JUDICIAL PROCESS FOR CHILD SUPPORT CASES IN DISTRICT COURT DISTRICTS THAT HAVE FAMILY COURT PILOT PROJECTS AND TO ALLOW THE USE OF CHILD SUPPORT HEARING OFFICERS IN THOSE FAMILY COURT PILOT PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 50 of the General Statutes does not apply to district court districts where there is a family court pilot project established pursuant to Section 25 of S.L. 1998-202.

SECTION 2.(a) Chapter 50 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Alternative Judicial Process for Child Support Cases.

"§ 50-40.1. Definitions.

The following definitions apply in this Article:

- (1) Alternative judicial process. — A procedure for having child support orders established and enforced by a magistrate or clerk who had been designated as a child support hearing officer pursuant to this Article.
- (2) Child support case. — The part of any civil or criminal action or proceeding, whether intrastate or interstate, that involves a claim for the establishment or enforcement of a child support obligation.
- (3) Dispose of a child support case. — The entry of an order in a child support case that either:
 - a. Dismisses the claim for establishment or enforcement of the child support obligation.
 - b. Establishes a child support obligation, either temporary or permanent, and directs how that obligation is to be satisfied.
 - c. Orders a particular child support enforcement remedy.

1 (4) Filing. — The date the defendant is served with a pleading that seeks
2 establishment or enforcement of a child support obligation, or the date
3 written notice or a pleading is sent to a party seeking establishment or
4 enforcement of a child support obligation.

5 (5) Child support hearing officer. — A clerk or assistant clerk of superior
6 court or a magistrate who has been designated pursuant to this Article
7 to hear and enter orders in child support cases.

8 (6) Initiating party. — The party, the attorney for a party, a child support
9 enforcement agency established pursuant to Title IV, Part D of the
10 Social Security Act, or the clerk of superior court who initiates an
11 action, proceeding, or procedure as allowed or required by law for the
12 establishment or enforcement of a child support obligation.

13 **"§ 50-40.2. Disposition of cases within 60 days; extension.**

14 Except where paternity is at issue, the district court judge or child support hearing
15 officer shall dispose of each child support case within 60 days from the date the case
16 was filed, except that this period may be extended for a maximum of 30 days by order
17 of the court if:

18 (1) Either party or either party's attorney cannot be present for the hearing.

19 (2) The parties have consented to an extension.

20 **"§ 50-40.3: Reserved.**

21 **"§ 50-40.4. Establishment of an alternative judicial process.**

22 (a) Districts Allowed to Have Alternative Judicial Process. — In any district court
23 district where a family court pilot project has been established pursuant to Section 25 of
24 S.L. 1998-202 and Section 8.1(a)(15) of S.L. 1998-212, the Director of the
25 Administrative Office of the Courts, the chief district court judge, and the clerk or clerks
26 of superior court in the district may implement an alternative judicial child support
27 process as provided in this Article.

28 (b) Procedure for Establishing Alternative Judicial Process. — When a district
29 court district implements an alternative judicial child support process under subsection
30 (a) of this section, the Director of the Administrative Office of the Courts, the chief
31 district court judge, and the clerk of superior court in an affected county shall determine
32 by agreement whether the child support hearing officer or officers for that county shall
33 be one or more clerks or one or more magistrates. If an agreement cannot be reached,
34 the Director of the Administrative Office of the Courts shall make the decision. If it is
35 decided that the hearing officer or officers for a county shall be magistrates, the chief
36 district court judge shall designate the person to serve as a hearing officer. If it is
37 decided that the hearing officer for a county shall be the clerk or assistant clerks, the
38 clerk of superior court in the county shall designate the person to serve as the hearing
39 officer. The chief district court judge, the clerk of superior court, and the Director of the
40 Administrative Office of the Courts shall ensure the qualification of persons designated
41 as child support hearing officers.

1 (c) Public to Be Informed. – When an alternative judicial process is implemented
2 in a county or district court district under subsection (a) of this section, the chief district
3 court judge, the clerk or clerks of superior court in affected counties in the district, and
4 the Administrative Office of the Courts shall take steps to ensure that attorneys, the
5 general public, and parties to pending child support cases in the county or district are
6 informed of the change in procedures and helped to understand and use the new system
7 effectively.

8 (d) Assignment of Child Support Cases for Hearing Before Child Support
9 Hearing Officer. – When an alternative judicial process is implemented in a county or
10 district court district under subsection (a) of this section, unless otherwise ordered by
11 the chief district court judge, all child support cases shall be heard and decided by a
12 child support hearing officer pursuant to this Article. However, a child support hearing
13 officer shall not hear a child support case pursuant to this Article where paternity has
14 not been legally established and is contested by a party.

15 **"§ 50-40.5. Authority and duties of a child support hearing officer.**

16 A child support hearing officer who is properly qualified and designated under this
17 Article has the following authority and responsibilities in all child support cases that are
18 designated under G.S. 50-40.4 or by the chief district court judge for hearing before a
19 child support hearing officer:

- 20 (1) To conduct hearings and to ensure that the parties' due process rights
21 are protected.
- 22 (2) To take testimony and establish a record.
- 23 (3) To evaluate evidence and make decisions regarding the establishment
24 or enforcement of child support orders.
- 25 (4) To accept and approve voluntary acknowledgments of support liability
26 and stipulated agreements setting the amount of support obligations.
- 27 (5) Except as otherwise provided in this Article, to enter child support
28 orders that have the same force and effect as orders entered by a
29 district court judge.
- 30 (6) To enter temporary child support orders pending the resolution of
31 unusual or complicated issues by a district court judge.
- 32 (7) To enter default orders.
- 33 (8) To subpoena witnesses and documents.

34 **"§ 50-40.6. Child support procedures in districts with alternative judicial process.**

35 (a) Scheduling of Cases. – The procedures of this section shall apply to all child
36 support cases in any district court district or county in which an alternative judicial
37 process has been established. All claims for the establishment or enforcement of a child
38 support obligation, whether the claim is made in a separate action or as part of a divorce
39 or any other action, shall be scheduled for hearing before the child support hearing
40 officer. The initiating party shall send a notice of the date, time, and place of the hearing
41 to all other parties. Service of process shall be made and notices given as provided by
42 G.S. 1A-1, Rules of Civil Procedure.

1 (b) Place of Hearing. – The hearing before the child support hearing officer need
2 not take place in a courtroom but shall be conducted in an appropriate judicial setting.

3 (c) Hearing Procedures. – The hearing of a case before a child support officer is
4 without a jury. The rules of evidence applicable in the trial of civil actions generally are
5 observed; however, the hearing officer may require the parties to produce and may
6 consider financial affidavits, State and federal tax returns, and other financial or
7 employment records. Except as otherwise provided in this Article, the hearing officer
8 shall determine the parties' child support rights and obligations and enter an appropriate
9 order based on the evidence and the child support laws of the State. All parties shall be
10 provided with a copy of the order.

11 (d) Record of Proceeding. – The record of a proceeding before a child support
12 hearing officer shall consist of the pleadings filed in the child support case,
13 documentation of proper service or notice or waiver, and a copy of the hearing officer's
14 order. No verbatim recording or transcript shall be required or provided at State
15 expense.

16 (e) Transfer to District Court Judge. – Upon his or her own motion or upon
17 motion of any party, the hearing officer shall transfer a case for hearing before a district
18 court judge in family court when the case involves:

19 (1) A contested paternity action.

20 (2) A custody dispute.

21 (3) Contested visitation rights.

22 (4) The ownership, possession, or transfer of an interest in property to
23 satisfy a child support obligation.

24 (5) Other complex issues.

25 Upon ordering a transfer, the hearing officer shall also enter a temporary child support
26 order pursuant to G.S. 49-14 and Chapter 50 of the General Statutes that addresses the
27 child's need for support pending the resolution of the case by the district court judge.
28 The chief district court judge shall establish a procedure for these transferred cases to be
29 given priority for hearing before a district court judge.

30 **"§ 50-40.7. Enforcement authority of child support hearing officer; contempt.**

31 When a child support case is before a child support hearing officer for enforcement
32 of a child support order, the hearing officer has the same authority that a district court
33 judge would have, except in cases of contempt. Orders that commit a party to jail for
34 civil or criminal contempt for the nonpayment of child support, or for otherwise failing
35 to comply with a child support order, may be entered only by a district court judge.

36 When it appears to a hearing officer that there is probable cause for finding such
37 contempt in a case before the child support hearing officer and that no other
38 enforcement remedy would be effective or sufficient, the hearing officer shall enter an
39 order finding probable cause and referring the case for hearing before a district court
40 judge. The order may indicate the amount of payment the responsible parent may make,
41 or other action he may take, or both, to comply with the child support order. If proof of
42 compliance is made to the hearing officer within a time specified in the order, the

1 hearing officer may cancel the referral of the contempt case to district court. Except as
2 specifically limited by this section, a clerk or magistrate acting as a child support
3 hearing officer retains all of the contempt powers he or she otherwise has by virtue of
4 being a clerk or magistrate.

5 **"§ 50-40.8. Appeal from orders of the child support hearing officer.**

6 (a) Appeal; Hearing de Novo. – Any party may appeal an order of a child support
7 hearing officer for a hearing de novo before a district court judge by giving notice of
8 appeal at the hearing or in writing within 10 days after entry of judgment. Upon appeal
9 noted, the clerk of superior court shall place the case on the civil issue docket of the
10 district court. The chief district court judge shall establish a procedure for such
11 transferred cases to be given priority for hearing before a district court judge. Unless
12 appealed from, the order of the hearing officer is final.

13 (b) Order Not Stayed Pending Appeal. – Appeal from an order of a child support
14 hearing officer does not stay the execution or enforcement of the order unless, on
15 application of the appellant, a district court judge orders such a stay.

16 **"§ 50-40.9. Qualifications of child support hearing officer.**

17 (a) Qualifications. – A clerk or assistant clerk of superior court or a magistrate, to
18 be designated and serve as a child support hearing officer, shall satisfy each of the
19 following qualifications:

- 20 (1) Be at least 21 years of age and not older than 70 years of age and have
21 a high school diploma or its equivalent.
- 22 (2) Be qualified by training and temperament to be effective in relating to
23 parties in child support cases and in conducting hearings fairly and
24 efficiently.
- 25 (3) Be certified by the Administrative Office of the Courts as having
26 completed the training required by subsection (b) of this section.
- 27 (4) Establish that he or she has one of the following qualifications:
 - 28 a. Election or appointment as the clerk of superior court.
 - 29 b. Three years' experience as an assistant clerk of superior court
30 working in child support or related matters.
 - 31 c. Six years' experience as an assistant clerk of superior court.
 - 32 d. Four years' experience as a magistrate whose duties have
33 included, in substantial part, the disposition of civil matters.
 - 34 e. Pursuant to G.S. 7A-171.1, five to seven years eligibility for
35 pay as a magistrate.
 - 36 f. Three years' experience working in the field of child support
37 enforcement or a related field.

38 (b) Training Required. – Before a clerk or assistant clerk or a magistrate may
39 conduct hearings as a child support hearing officer he shall satisfactorily complete a
40 course of instruction in the conduct of the hearings established by the Administrative
41 Office of the Courts. The Administrative Office of the Courts shall establish a course in
42 the conduct of the hearings. The Administrative Office of the Courts may contract with

1 qualified educational organizations to conduct the course of instruction and shall
2 reimburse the clerks or magistrates attending for travel and subsistence incurred in
3 taking the training."

4 **SECTION 2.(b)** Article 2A of Chapter 50 of the General Statutes, as enacted
5 by this section, applies only to district court districts where there is a family court pilot
6 project established pursuant to Section 25 of S.L. 1998-202.

7 **SECTION 3.** This act is effective when it becomes law, expires December 1,
8 2002, and applies to cases pending on or filed on or after the effective date.